

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
CHARLES O. AND GAIL P. SPENCER )

Appearances:

For Appellants: Charles O. Spencer, in pro. Per=  
For Respondent: James **Philbin**  
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18594  
of the Revenue and Taxation Code from the action of the  
Franchise Tax Board on the protest of Charles O. and  
Gail P. Spencer against a proposed assessment of additional  
personal income tax and penalties in the total amount  
of **\$5,251.15** for the year 1965.

Appeal of Charles O. and Gail P. Spencer

In 1970 the Internal Revenue Service completed an investigation of appellants' federal income tax liability for 1965, resulting in a determination that appellants' taxable income for that year had been approximately \$69,000. After receiving notice of this determination, respondent issued a deficiency assessment based on the federal findings. Subsequently, upon discovering that appellants had not filed a California personal income tax return for 1965, respondent mailed a notice and demand to appellants requesting that they file a return for that year. When no **response** to this notice was received, respondent assessed a 25 percent penalty for failure to file a return, an additional 25 percent penalty for failure to file after notice and demand, and a 5 percent negligence penalty. Appellants protested the deficiency and penalty assessments, and respondent's denial of the protest led to this appeal.

On previous occasions too numerous to cite, we have held that a deficiency assessment based on a federal determination is presumptively correct, (see Rev. & Tax. Code,, § 18451), and that the taxpayer has the burden of proving the incorrectness of that determination. (See e.g., Appeal of Thomas and Vera Wills, Cal. St. Bd. of Equal., Dec. 15, 1976; Appeal of Joseph B. and Cora Morris, Cal. St. Bd. of Equal., Dec. 13, 1971.) Here, **appellants** have merely alleged that the federal assessment was a complete fabrication designed to force Mr. Spencer into cooperating with a federal grand jury investigation. Besides these assertions, however, **appellants have** offered no evidence from which we could conclude that the federal audit findings were erroneous in any respect. Appellants must therefore be held to have failed to carry their burden of proof on this issue.

With respect to the penalties, appellants have made no effort at all to show that they are unjustified. Indeed, appellants have not even challenged **them**. Accordingly, the penalties, as well as the deficiency in tax, must be sustained.

Appeal of Charles O. and Gail P. Spencer

O R D E R

Pursuant to-the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Charles O. and Gail P. Spencer against a proposed assessment of additional personal income tax and penalties in the total amount of \$5,251.15 for the year 1965, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of February, 1977, by the State Board of Equalization.

*William W. Doolittle* Chairman  
*Robert J. Smith* Member  
*Paul J. Goss* Member  
*Iris Sanchez* Member  
\_\_\_\_\_, Member

ATTEST:

*W. W. Doolittle*, Executive Secretary